

sideration by all who are interested in the maintenance of adequate professional standards.

The enactment of a good state medical practice act is only a first step in the protection of the public from incompetent practitioners. The success of such a law depends not only upon the personnel of the examining board, but also upon the personnel in the investigation and legal departments of the board.

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*Importance of Personnel in Legal Department.* When illegal practice by unlicensed practitioners becomes evident, many physicians are apt to think that the reason must be due to a poorly drawn state medical practice act. As a matter of fact, the explanation is not infrequently found to be dependent on the indifference or connivance of the duly constituted legal representatives of the state. Some of these legal officers at times, for reasons of political or other expediency, either close their eyes to the violation of medical licensure laws or perform their duties in medical statute enforcement in such half-hearted manner that the poor results obtained furnish a good alibi for stressing other work in their departments. That is why the personal attainments of the investigators and the attorney or attorneys for a board of medical examiners are so important.

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*Recent Changes in the Legal Department of the California Board of Medical Examiners.*—On this point, attention may here be called to the fact that this year the California Legislature passed a measure (since signed by Governor James Rolph) whereby, supposedly in the interest of economy, the positions of the attorneys of some of the boards and bureaus of the state government were abolished. The legal work of such boards is hereafter to be carried on by a deputy or deputies of State Attorney General Webb, these deputies acting, when necessary, in conjunction with district or other local attorneys.

One of the state boards which lost its own attorney through this new law was the California Board of Medical Examiners. It is sincerely hoped that this new plan of legal operation will have no detrimental effects upon the work of our state examining board. For it is to be remembered that the Board of Medical Examiners during many years past has not received any moneys whatsoever from the general tax funds of California; and that the income from which its expenses have been paid was derived altogether from licensure and similar fees, all received from physicians. The reason physicians have sanctioned such special taxation of the members of their profession has been due to their great interest in the public health, and because they construe it to be important that proper legal standards of practice should be maintained by every commonwealth. During the next year it will be interesting to observe how the new legal arrangements for the California State Board of Medical Examiners will work out in practice, to be hoped for the best.

*The Injunction Approach in the West Virginia Case.*—Coming back to the decision of the West Virginia Court of Appeals of May 13, it is noted that the legal procedure used in that case, which was directed against an illegal practitioner, was not by way of a criminal action, but by means of a bill of complaint filed in a court of equity.

In other words, the illegal practitioner was not haled into court on a criminal action proceeding, because in a criminal action it would have been necessary to prove to the satisfaction of a jury—sometimes a very difficult task—that the unlicensed practitioner was carrying on his illegal practice “beyond a reasonable doubt.” In the West Virginia case three licensed physicians, as citizens who felt they had been deprived of certain legal and property rights, went into a court of equity and petitioned that an injunction be granted to prevent the unlicensed practitioner from continuing to carry on his illegal practice.

The following excerpt from Woodward’s article emphasizes some of the differences which arise in injunction and criminal proceedings:

“In favor of the use of injunctions for the protection of the medical profession and of the public against the activities of unauthorized practitioners of medicine, it may be pointed out that prevention is the only safeguard against the damage that such practitioners may do, and prevention is afforded by injunctions only. Fines and imprisonment for offenses committed long ago do not afford relief from injuries from past misconduct nor protect against the consequences of offenses to be committed in the future. Injunctions are more effective, too, than are criminal prosecutions, because in criminal prosecutions the evidence of wrongdoing has to be proved beyond a reasonable doubt, to the satisfaction of a jury, and in event of acquittal no appeal can be taken by the prosecution, even though it may be desired to secure rulings of a higher court on what seem to be errors of law committed in the trial court. On the other hand, under the principles of the West Virginia case just decided, if a bill of complaint is filed in a court of equity, with a petition for an injunction, it need be shown to the satisfaction of the court only that the respondent practitioner is competing unlawfully with licensed practitioners and is a menace to the welfare of the people, and that there is no other adequate remedy for the situation—and this need be shown only by a preponderance of evidence. If the petition is denied by the trial court, the petitioner can appeal to higher courts, where all questions of law can be finally settled. . . .”

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With the West Virginia decision now a matter of record, it is probable that in other states of the Union this procedure, by means of injunction, will receive further trial. On its face, the method seems to have much to commend it.

## MAKING A WILL

*Why Physicians Should Know Somewhat About Wills.*—Believing that the subject would prove of great appeal to members, General Counsel Hartley F. Peart, Esq., of the California Medical Association was requested to write an article touching upon and illustrating the complexity of the problems pertaining to the making of wills, and on some of the more important statutes of California concerning community property rights and other interests in a decedent’s estate. As General Coun-

sel Peart points out, physicians, because of their confidential relations with patients, are frequently consulted by the latter with reference to the making of their wills; and it is often necessary for a physician to suggest that a patient get his earthly affairs in order. For these reasons, as well as for the personal information of members of the Association, it is hoped that the advice given by Mr. Peart will be found of value. The article referred to appears in this issue, page 20.

General Counsel Peart was for many years the inheritance tax attorney for the treasurer of the city and county of San Francisco, and thereafter special counsel for the state controller in a number of leading cases involving inheritance tax due to the state of California; including the estate of the late cattle baron, Henry Miller, in which an inheritance tax of over two million dollars was paid, after years of legal proceedings spent in determining and fixing the tax. The administration of the Inheritance Tax Act of California is directed to the fixing and assessing of such tax on the interests and property which pass from a decedent by reason of his death.

Singularly enough, the case of John Brown, mentioned in the article above referred to, pertains to a member of a doctor's family; and an inquiry sent by the editor to the general counsel concerning some features of that estate, resulted in a suggestion that the article be written.

#### DECREASED BUDGET OF STATE BOARD OF HEALTH

Dismissal on July 1 of some of the technically trained personnel of the California Department of Public Health, with the probability that some of the smaller full-time county health units will have to be abandoned, was recently announced by Dr. John H. Graves, president of the State Board of Public Health.

This action, Dr. Graves said, has become necessary as the result of a 20 per cent reduction made by the legislature to a budget which the department had previously reduced by 25 per cent.

Notices of their separation from the service have been given to a number of the department's employees; in the classifications that include pediatrician, public health nurse, sanitary engineer, bacteriologist, rodent hunters (bubonic plague) and stenographers.

On a cooperative basis, the state and federal public health departments have contributed toward maintenance of some of the California full-time health units. These funds have been matched by the Rockefeller Foundation. This financial support by state and federal governments is being withdrawn, which means there will be no further contributions from the Rockefeller Foundation. Unless the counties can raise their own funds—and they report this will not be possible—full-time health units which have been receiving this aid necessarily will be obliged to revert to their former status, with part-time health officers.

"The entire budget of the State Department of Public Health," Doctor Graves said, "was slaugh-

tered by the so-called economy bloc in the legislature. The total appropriation allowed by the legislature is so small—representing a 45 per cent reduction over the present biennium—that some of our bureaus have been seriously crippled.

"Child Hygiene, in which field much of our program of prevention lies, has little left—a bureau chief, a stenographer, a part-time public health nurse.

"The field worker in the Bureau of Tuberculosis has been removed. Previously, our motor clinic and its personnel had to be discontinued. This entire bureau now consists of two persons—the chief and a clerk.

"All of the work that lies ahead of us, not only for the prevention of tuberculosis, particularly in children, but for the prevention and control of other communicable diseases, and for public health work in general, is in jeopardy. Public health in California, I am afraid, will run to a low ebb unless the legislature, in the July session, restores some of our funds."

Attention is called to the above, so that the physicians of California may better understand the new regulations which, under these conditions, must come into operation.

The State Board of Health suggested to the legislature that if the state tuberculosis subsidy to counties (\$3 per week per patient in county sanatoria measuring up to proper state standards) was reduced to a \$2 basis, the saving to the state treasury would have amounted to something like \$162,000 per year; and that if the sum so saved could have been allocated to the State Board of Health, none of the essential bureaus or activities of the State Board of Health would have been jeopardized.

It is unfortunate that the budget revision committees of the legislature failed to visualize the importance of the public health work of California; and that in the effort to create a balanced budget, the blue pencil method of reduction should have been followed. It is hoped that in the postponed July session of the legislature, this budget will be reconsidered. Physicians who are interested in these public health activities should contact their local legislators during the recess, which ends on July 17, in the hope of securing a reconsideration of these matters when the legislature again convenes.

## EDITORIAL COMMENT\*

### MEDIASTINAL PLEURISY

Mediastinal pleurisy is an inflammation of the pleura covering the mesial side of the lung and the lateral surface of the mediastinum. Not until there is encysted fluid between these surfaces are

\* This department of CALIFORNIA AND WESTERN MEDICINE presents editorial comment by contributing members on items of medical progress, science and practice, and on topics from recent medical books or journals. An invitation is extended to all members of the California and Nevada Medical Associations to submit brief editorial discussions suitable for publication in this department. No presentation should be over five hundred words in length.